

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 09-20119-JWL
)	11-02697-JWL
JESUS RIOS MENDOZA,)	
)	
Defendant.)	
)	

MEMORANDUM AND ORDER

This matter is presently before the court on defendant Jesus Rios Mendoza’s motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (doc. 821). For the reasons set forth below, this motion is dismissed as premature.

Mr. Rios Mendoza pled guilty to conspiracy to distribute and possess with intent to distribute more than five kilograms of cocaine; more than fifty grams of methamphetamine; and marijuana (doc. 484). He received a 121-month term of imprisonment. On June 2, 2011, Mr. Rios Mendoza filed a notice of appeal (doc. 692). His appeal is currently pending before the Tenth Circuit¹ (Case No. 11-3159).

“Absent extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the

¹ Although Mr. Rios Mendoza has filed a motion with the Tenth Circuit requesting that it “close his case,” at this time, his case is still pending.

direct appeal is still pending.” *United States v. Cook*, 997 F.2d 1312, 1319 (10th Cir. 1993) (citing Rule 5, *Rules Governing § 2255 Proceedings*, advisory committee note). Mr. Rios Mendoza has not suggested any extraordinary circumstances warranting consideration of his direct appeal and § 2255 petition simultaneously. As such, the court will not consider the defendant’s § 2255 petition at this time.

Thus, Mr. Rios Mendoza’s motion (doc. 821) is dismissed as premature.

IT IS THEREFORE ORDERED BY THE COURT that defendant’s motion to vacate judgment (doc. 821) is dismissed.

IT IS SO ORDERED this 13th day of March, 2012.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge